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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE553

Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan for Implementing Recommendations 14/15; Commerce Trusted Trader Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Ocean Council Committee on IUU Fishing and Seafood Fraud (NOC Committee) is seeking public input on the design and implementation of a Commerce Trusted Trader Program as part of an effective seafood traceability process to combat IUU fishing and seafood fraud. The Commerce Trusted Trader Program will establish within the previously proposed Seafood Import Monitoring Program such benefits as reduced targeting and inspections, and enhanced streamlined entry into U.S. commerce for holders of an International Fisheries Trade Permit that are certified for participation in the Commerce Trusted Trader Program.

DATES: Comments must be received by *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*. Public webinars

will take place from 2:00 to 3:30 p.m. eastern daylight time on May 4, 2016, 2:00 to 3:30 p.m. eastern daylight time on May 10, 2016, and 2:30 to 4:00 p.m. eastern daylight time on June 6, 2016.

ADDRESSES: You may submit comments on this document, identified by Docket NOAA-NMFS-2014-0090, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Melissa Beaudry, Quality Officer, Office of International Affairs and Seafood Inspection, 1315 East-West Highway, Suite 9511, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the comment period, may not be considered. All comments received are part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. Anonymous comments will be accepted (enter "N/A" in the required field if you wish to remain anonymous.)

Information on joining the public webinars will be posted online at www.iuufishing.noaa.gov/.

FOR FURTHER INFORMATION CONTACT: Melissa Beaudry, Quality Officer, Office of International Affairs and Seafood Inspection; 301-427-8308.

SUPPLEMENTARY INFORMATION:

Background

On June 17, 2014, the White House released a Presidential Memorandum entitled "Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud." Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of States and Commerce, with membership including a number of other Federal agency and White House Offices: The Departments of Agriculture, Defense, Health and Human Services, Homeland Security, Interior, and Justice; the Federal Trade Commission; the U.S. Agency for International Development; the Council on Environmental Quality; the Office of Science and Technology Policy; the National Security Council; and the Office of the U.S. Trade Representative.

The Task Force was directed to report to the President "recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need." Those recommendations were provided to the President through the National Ocean Council, and NMFS requested comments from the public on how to effectively implement the recommendations of the Task Force (79 FR 75536, December 18, 2014). Oversight for implementing the recommendations of the Task Force has been charged to the National Ocean Council Standing Committee on IUU Fishing and Seafood Fraud (NOC Committee). On March 15, 2015, the Task Force published its Action Plan for Implementing the Task Force Recommendations (<http://www.nmfs.noaa.gov/ia/iuu/taskforce.html>).

Recommendation 14 concerns the development of a risk-based traceability program as a means to combat IUU fishing and seafood fraud. Recommendation 15 calls for the implementation of the first phase of that risk-based traceability program that tracks fish and fish products identified as being at risk of IUU fishing or seafood fraud from point of harvest to point of entry into U.S. commerce.

The first step taken to address Recommendations 14 and 15 was the identification of those species likely to be at risk of IUU fishing or seafood fraud. The second step taken was

proposed rulemaking (81 FR 6210, February 5, 2016), which would establish data reporting, recordkeeping, and related operational requirements at the point of entry into U.S. commerce for imported fish and fish products of at-risk species. The data reporting and recordkeeping requirements for at-risk species imports would apply to importers of record, who would be required to obtain an International Fisheries Trade Permit. The importers of record are the importers as identified in CBP entry filings for shipments containing the designated at-risk species. Customs brokers may fulfill these requirements on behalf of the importer of record at the importer of record's request.

The next step is to develop and implement a trusted trader program whereby the Secretary of Commerce will collaborate with the Secretary of Homeland Security and other agencies as relevant to assist in developing a voluntary Commerce Trusted Trader Program for importers of the species covered by the final rule to be issued to establish a Seafood Import Monitoring Program. The Commerce Trusted Trader Program will provide benefits such as reduced targeting and inspections and enhanced streamlined entry into U.S. commerce for certified importers. With this notice, the Committee is soliciting comments on the design and implementation of this Commerce Trusted Trader Program.

Scope

As proposed, the Seafood Import Monitoring Program holds the importer of record responsible for certain reporting and recordkeeping requirements. The Committee has therefore identified the universe of International Fishery Trade Permit (IFTP) holders as falling within the scope of a Commerce Trusted Trader Program. The Committee seeks comments on whether this is the appropriate scope and how the scope of the program might be expanded to include entities with a role in securing the supply chain that are not directly responsible for record keeping and reporting and who may not be required to hold an IFTP. For example, might a Trusted Trader Program include customs brokers acting on behalf of importers of record, freight forwarders, foreign harvesters, foreign processors or a foreign exporting company? The Committee seeks comments on what other roles in the supply chain and import process might benefit from reduced inspections and a streamlined entry process.

Criteria

The Committee seeks comment on scope of criteria for evaluating and certifying permit holders as "trusted traders". Such criteria might include, among other considerations, the compliance record of the applicant for other federal programs, the extent to which the certified permit holder has measures in place to verify the source and chain of custody of imported fish and fish products, and the nature and complexity of the supply

chains from which the permit holder sources their imports. Additionally, the Committee seeks comment as to how the criteria within the scope of a Trusted Trader program should be weighted when considering certification of a permit holder.

The Committee also seeks comment on which attributes of a supply chain covered by the scope of the Seafood Import Monitoring Program (harvest, landing, shipment, processing, storage, import entry, etc.), if any, can be considered as criteria for inclusion in a Trusted Trader program. As with the Seafood Import Monitoring Program itself, implementation of a Commerce Trusted Trader Program must be compliant with United States international trade obligations.

Benefits and Incentives

The Task Force Action Plan describes the Commerce Trusted Trader Program as "provid[ing] benefits such as reduced targeting and inspections and enhanced streamlined entry into U.S. commerce..." The Committee seeks comments on these and other potential benefits that may expedite the flow of trade, reduce the burden of compliance for certified permit holders, and improve implementation and enforcement efficiency. Additionally, the Committee seeks comment on how those benefits will incentivize participation in the Commerce Trusted Trader Program while ensuring the continued effectiveness of the Seafood Import Monitoring Program.

Evaluation and Verification of Certified Permit Holders

The Committee seeks recommendations on the potential scope and process of evaluating permit holders for certification. Commenters are encouraged to describe how permit holders should be evaluated against recommended criteria.

The Committee also seeks recommendations on the potential scope and process of verifying a certified permit holder's ongoing compliance with certification criteria. Commenters are encouraged to describe process and frequency by which certified Trusted Traders and other entities that may be included in the Commerce Trusted Trader Program are evaluated for compliance with certification criteria.

Relationship to other Trusted Trader or Federal Import Programs

NOAA administers several other trade monitoring programs requiring importers of record to obtain an IFTP, report information at time of entry, and maintain records describing the imported product's chain of custody. These include the Highly Migratory Species Catch Documentation Program and the Antarctic Marine Living Resources Import/Export Certification Program. The Committee seeks comment on the extent to which these programs can or should be included in a Commerce Trusted Trader Program.

Comments are also requested regarding the potential coordination of other federal trusted trader or import

monitoring programs as a means of expediting the entry of fish products, reducing overall regulatory burden, and improving the efficiency of implementation and enforcement. Additionally, the Committee seeks comment on how coordination, or integration, with other federal Trusted Trader programs will incentivize participation in the Commerce Trusted Trader Program while ensuring the continued effectiveness of the Seafood Import Monitoring Program.

NMFS notes, however, that the Tuna Tracking and Verification Program (TTVP) requires certain reporting and recordkeeping requirements regarding imports of tuna products on the part of U.S. processors, importers, and others for purposes of the dolphin safe labeling requirements for tuna product. See 50 CFR part 216, subpart H. These requirements were recently amended by interim final rule. See 81 FR 15444, March 23, 2016. The dolphin safe labeling, reporting and recordkeeping requirements fall outside the scope of the Commerce Trusted Trader program and those dolphin safe labeling requirements would continue to apply for tuna product regardless of whether the importer qualifies as a trusted trader under this program.

Third Party Traceability Systems

The Committee is aware of private efforts by seafood producers, traders, wholesalers, retailers, and third parties to trace and track seafood products and seeks comment regarding the

consideration of those traceability efforts in the design and implementation of a Commerce Trusted Trader Program. The committee also seeks recommendations for operational standards for such systems should they be included in a Commerce Trusted Trader Program.

Timing and Implementation

While the IUU Task Force Action Plan calls for the Commerce Trusted Trader Program to be finalized by September 2016, the timing of actual implementation may be affected by, among other factors, timing of the implementation of the Seafood Import Monitoring Program final rule, completion of the structure and elements of the Commerce Trusted Trader Program, and the timeframe for completion of Commerce Trusted Trader Program business rules in the International Trade Data System, as necessary for implementation. NMFS will in any case make its best effort to implement the Seafood Import Monitoring Program and the associated Commerce Trusted Trader Program simultaneously. The Committee seeks comment on the potential impacts and benefits of implementing the Commerce Trusted Trader Program some weeks or months following the implementation of the Seafood Import Monitoring Program. The committee also seeks recommendations for design and implementation of the Commerce Trusted Trader Program regarding measures that can be taken to

minimize the cost and burden of those impacts and capture available benefits.

The Committee will address outstanding design and implementation issues associated with the Commerce Trusted Trader Program in its December 2016 report on the implementation of the Seafood Traceability Program.

Following the public comment period, the NOC Committee will take the input received into consideration while finalizing recommendations that will be sent forward for appropriate agency action, as outlined in the implementation plan for Task Force Recommendations 14 and 15.

Dated: April 25, 2016.

John Henderschedt,

Director,

Office for International Affairs and Seafood Inspection,

National Marine Fisheries Service.

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